

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3743 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIPRASAD P. DAVE

Versus

STATE OF GUJARAT

Appearance:

MR DF AMIN for Petitioner

MR RM DESAI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/12/97

ORAL JUDGEMENT

The petitioner retired as an Assistant Teacher from a Grant-in-Aid Secondary School. The petitioner rendered services till May 31, 1976 on which date he retired on superannuation on completion of 58 years of age. The said date of superannuation was determined on the basis that the petitioner's birth date was February 3, 1928. The said birth date was determined in the year

1978 when the petitioner was already in service as mentioned in the letter dated May 29, 1978 (Annex.A) from the District Education Officer, Kheda District to the Principal of the School. The birth date earlier mentioned in the service record of the petitioner was July 11, 1926.

After retirement of the petitioner, pension papers were processed and respondent no.2 raised dispute about the birth date of the petitioner and in view of the said objection raised in the year 1976, the retirement benefits of the petitioner, such as pension and gratuity were withheld. The petitioner therefore, filed the present petition, which was admitted on August 11, 1986. At that time this Court directed the respondents to fix petitioner's pension and gratuity on provisional basis as per the retirement date that may be considered legal and valid by the respondent authority. It was further directed that if the petitioner succeeds and is found to be entitled to increased pension than paid on provisional basis the petitioner will be entitled to claim the arrears with 12% interest thereon. In view of the aforesaid directions the respondents fixed the amount of gratuity and pension of the petitioner on provisional basis and on the basis that the birth date of the petitioner was July 11, 1926.

During the pendency of the petition, by letter dated December 27, 1990 of the Education Department, the Government of Gujarat instructed the respondent authority that since the petitioner had raised the issue regarding his birth date while in service and since that issue was already decided earlier (in 1978), the retirement benefits payable to the petitioner should be determined on the basis that the birth date of the petitioner was February 3, 1928. Instructions were also issued to finalize the pension case of the petitioner and to make payment of arrears of difference immediately. Even though the aforesaid decision was taken by the State Government in December 1990 and instructions for immediate payment of arrears of difference were given to the subordinate authorities, the petitioner was paid arrears of difference of gratuity amounting to Rs.24,824/75 only on October 15, 1991. There is no dispute about the fact that the pension is also fixed as demanded by the petitioner and that he is being paid the amount of pension accordingly and that amount of arrears of difference of pension for the past period has already been paid to the petitioner.

In view of the above the only question which now

survives for consideration is the petitioner's prayer to direct the respondents to pay interest on the delayed payments.

At the hearing of the petition Mr. Amin for the petitioner fairly stated that the petitioner is not claiming any interest on the amount of arrears of difference of pension which was to the tune of Rs.18,000/- approximately, because earlier the petitioner was paid excess pension of Rs.16,000/- approximately which was subsequently adjusted against the amount of arrears of difference of pension payable to the petitioner.

However, as far as the interest on the delayed payment of arrears of gratuity is concerned Mr. Amin has pressed the said claim and submitted that when the petitioner had rendered services till May 1986 the respondents ought not to have withheld the amount of gratuity nor could the respondents have determined the amount of gratuity for lesser amount.

On the other hand learned Counsel Mr.R.M.Desai submitted that in the facts and circumstances of the case no direction should be issued for the payment of interest.

Having heard the learned Counsel for the parties, it appears to the Court that since no explanation is forthcoming from the respondents for the delay in fixing the amount of gratuity payable to the petitioner, the respondent should be directed to pay interest on the amount of Rs.24,834/75 at the rate of 12% from October 15, 1986 till the date of payment of the aforesaid amount to the petitioner which is stated to be October 15, 1991. The aforesaid directions shall be carried out by the respondents on or before January 31, 1998.

Rule is made absolute to the aforesaid extent with costs.

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